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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Julian Carroll, and individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

PepsiCo, Inc., Tropicana Products,
Inc.,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR
DAMAGES

C12-03512

CLASS ACTION COMPLAINT

Plaintiff Julian Carroll ("Plaintiff"), individually and on behalf of all others similarly situated, brings this action against Defendants PepsiCo, Inc. ("PepsiCo") and Tropicana Products, Inc. ("Tropicana") (collectively, "Defendants" or "Tropicana"), upon information and belief, alleges as follows:

BACKGROUND

1. Tropicana Orange Juice is not natural! Fresh squeezed orange juice is unstable and has a short shelf-life and to extend the shelf-life of its products for mass distribution,

FILED
JUL - 6 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND
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iss.
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NC

1 Tropicana processes its orange juice and storing it at tank farms frozen in nitrogen. This process
2 strips orange juice of its flavor and aroma. Before the product is packaged and sold to
3 consumers, Tropicana adds chemical “flavor packets” to the liquid so smells and taste like
4 orange juice.

5 2. Tropicana’s processing technique changes the nature of the juice that originally
6 came from the orange. Tropicana knows that labels matter and is aware consumers prefer
7 “natural” products and is capitalizing on this desire by deceptively promoting and marketing its
8 orange juice as “natural,” despite the multiple levels of scientific engineering its orange juice
9 undergoes.
10

11 3. Specifically, during the processing of Tropicana Orange Juice: (1) oranges from
12 Florida, Brazil and Mexico are combined to cover up any varietal and geographic differences; (2)
13 naturally present air is removed from the intercellular spaces of the juice through the deaeration
14 process; (3) there is also a reduction and deactivation of naturally occurring enzymes and
15 microbial activity through pasteurization; (4) the orange juices are stored in large vats for a year
16 or sometimes longer; and (5) chemically engineered “flavor packets” are added to mimic the
17 flavors of natural freshly squeezed orange juice to what otherwise is an unpleasant orangey sugar
18 water.
19
20

21 4. Tropicana also uses the oils from the skins of oranges imported from Mexico and
22 Brazil to flavor its orange juice. These oranges are not subject to the same pesticide regulation
23 and scrutiny as those grown in the United States. And when these oranges are squeezed for their
24 flavor, their pesticides are squeezed in along with their oils.
25

26 5. Tropicana does not mention the added flavoring and aroma and or the processing
27 that alters the essential nature of the juice in its orange juice advertisements and or label. Instead,
28

1 Tropicana promotes its orange juice product with an image of a straw stuck directly into an
2 orange, as if the consumer were purchasing juice fresh from that orange. This image, coupled
3 with the phrase "Natural Orange Juice" in large, prominent type, resonates Tropicana's false and
4 deceptive message to the consumer.

5 6. Further, as a result of its false and deceptive message, including on the basis that
6 its orange juice is "all natural," Tropicana prices its orange juice at a premium over its
7 competitor's products made from concentrate.

8 7. Tropicana's ability to extract a premium for its orange juice product is a testament
9 to the success of its deceptive branding and marketing campaign. Tropicana's market share is
10 typically approximately 40-50 percent of all the orange juice sold each year.

11 8. Plaintiff seeks relief in this action individually, and as a class action on behalf of
12 all purchasers of Tropicana Orange Juice labeled and marketed as being "natural orange juice,"
13 for violations of California's Deceptive and Unfair Trade Practices Act, California's Advertising
14 Act, unjust enrichment, and breach of express warranty created by Defendants' advertising,
15 including their labeling.

16 **JURISDICTION AND VENUE**

17 9. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d) (2). The
18 matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
19 and is a class action in which members of the class of Plaintiff's are citizens of states different
20 from Defendants. Further, the class members all reside in a state other than the states in which
21 Defendants are domiciled.

22 10. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts
23 and transactions giving rise to this action occurred in this District and because Defendants:
24
25
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27
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(a) Are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets within this District through the promotion, marketing, distribution and sale of their products in this District;

(b) Conduct substantial business in this District; and

(c) Are subject to personal jurisdiction in this District.

THE PARTIES

11. Plaintiff Julian Carroll is a citizen of Oakland, Alameda County, California and an individual consumer residing in Alameda County, California, who during the proposed class period, purchased "Tropicana Pure Premium" orange juice which has no pulp and is labeled as "100% Pure & Natural Orange Juice with Calcium and Vitamin D" and is "Never from Concentrate." Plaintiff has been purchasing Tropicana Orange Juice at least weekly for the past several years. Plaintiff purchased Tropicana Orange Juice from Safeway on Grand Avenue in Oakland, California. He was exposed to and relied on defendants misrepresentations, including that its orange juice is "natural orange juice." Plaintiff would not have purchased Tropicana Orange Juice had he known the truth about Tropicana's representations, including that it was extensively processed and flavored. Plaintiff did not receive the benefit of his bargain in each purchase of Tropicana Orange Juice. Plaintiff further paid a price premium when he purchased Tropicana Orange Juice.

12. Defendant PepsiCo, is and at all relevant times was, a Delaware corporation with its principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.

13. Defendant Tropicana is and at all relevant time was a division of PepsiCo. Tropicana manufactures, markets, and sells Tropicana Orange Juice nationwide.

SUBSTANTIVE ALLEGATIONS

1 14. Tropicana's marketing materials, advertising, website, labeling, packaging and
2 point of sale materials, represent that its orange juice is "natural orange juice." In fact, the
3 labeling for Tropicana Orange Juice, including reproduction of the labeling on its website,
4 Facebook, Twitter, and on its YouTube advertisements, prominently features the image of a
5 straw stuck in an orange with the large-type claim: "natural orange juice."
6

7 15. However, Tropicana Orange Juice is not "natural orange juice." Defendants
8 heavily process Tropicana Orange Juice by pasteurizing, deaerating, and storing it for long
9 periods of time at a "tank farm" and under a nitrogen blanket, which strips the juice of its flavor
10 and aroma. Defendants then re-flavor the product with chemical "flavor packets" before it is
11 packaged into a carton and sold to the consumer.
12

13 16. Defendants, through deceptively marketing their Tropicana Orange Juice product,
14 unscrupulously capitalize on consumers' heightened demand for natural products.

15 17. To preserve the orange juice from oxidization, Tropicana uses deaeration to
16 remove any dissolved oxygen from its juice.
17

18 18. Air is an essential component of natural orange juice. According to leading
19 scientists who study fruit juices air is naturally present in the intercellular spaces of fruit. Oxygen
20 in air, present in the spaces between the juice vesicles, and from the surroundings, saturates the
21 juice producing oxidation reactions that often result in browning, changes in aroma, and loss of
22 nutritional value. These reactions are exacerbated by the increase in temperature during
23 pasteurization and reduce the overall quality of the product during storage.
24

25 19. Importantly, when orange juice is stripped of oxygen, it is also stripped of
26 important volatile compounds that provide flavor and aroma.
27
28

1 20. Tropicana does not disclose that its Tropicana Orange Juice undergoes this
2 deaeration process.

3 21. Defendants' orange juice is also pasteurized to improve its shelf-life. However,
4 this process also alters the delicate flavor and reduces the aromatic quality of the juice.
5 Pasteurization is a form of thermal processing that reduces, inactivates, or eliminates enzyme and
6 microbial activity in orange juice to extend its shelf-life. Pasteurization, however, compromises
7 the aroma composition and flavor of the fresh juice, producing undesirable off-flavor and off-
8 odor compounds.
9

10 22. Tropicana then adds ethyl butyrate to its orange juice to offset the effect of its
11 pasteurization process.
12

13 23. Defendants' orange juice is then stored in nitrogen gas in multi-million gallon
14 tanks at a tank farm in the Florida. The juice is stored for weeks, months, and sometimes up to
15 and over a year. An increase in storage time results in a proportionate decrease in sweet odor,
16 strength of the orange odor, sweet flavor, sour flavor, and orange aftertaste.
17

18 24. Defendants know that their deaeration and pasteurization processes change the
19 physical and chemical properties of orange juice and that increased storage time and temperature
20 conditions of storage can cause orange juice to deteriorate in taste and nutritional value.

21 25. Nevertheless, as depicted in Defendants' marketing image of the straw stuck in an
22 orange, Defendants deceptively advertise that it's orange juice is squeezed from fresh oranges,
23 misleadingly representing that the juice is fresh, when, in fact, its product is made from orange juice
24 that has been pasteurized, deaerated, and stored for as long as one year.
25

26 26. Once all the volatiles are stripped from the orange juice and it is processed, the
27 remaining liquid is a sugary orange liquid that lacks the flavor and aroma of orange juice. Without
28 the addition of flavoring and aroma the juice would be nearly undrinkable.

1 27. To add flavor back to the liquid, Defendants re-flavor the product to taste like natural
2 orange juice. To do this, Defendants use flavor packets in what they tout as natural orange juice.

3 28. These flavor packets are scientific engineered and are designed by from processed
4 orange oils and essence. Thus, contrary to Defendants' marketing message, the distinctive taste of
5 Tropicana is the product of a recipe on a "blend card" created by scientists, and not a product of
6 nature.

7 29. Flavorists design the flavor packets to highlight certain aromas and flavors associated
8 with orange juice by fractionating orange oil and essence into individual components, reformulating
9 them, and blending them in varying mixtures. The aroma and flavoring added to the orange juice
10 bears little resemblance to the natural orange oil and essence that leaves the juice during deaeration
11 and or that is altered during pasteurization and or storage.

12 30. Tropicana also adds water-soluble orange essence, which dilutes the orange juice.
13 Tropicana adds this water-soluble essence because it provides the "freshest" characteristics to the
14 orange juice.
15

16 31. Regardless of the season, Tropicana Orange Juice tastes exactly the same. Tropicana
17 is able to maintain this consistency because its orange juice is the product of a scientifically designed
18 recipe that offsets the flavor differences that would otherwise naturally arise from making juice
19 from different varieties and different blends of oranges that ripen at different times.
20

21 32. Through its marketing and advertising, including on its product labeling,
22 Tropicana falsely claims its Tropicana Orange Juice is "natural orange juice" while deliberately
23 omitting any reference to its use of flavor packets.
24

25 33. Tropicana does not disclose to consumers on its labeling and or mention in its
26 advertising that its orange juice is dependent upon and enhanced by added flavoring and aroma
27
28

1 34. Tropicana does, however, indicate on its website that the orange oil extracted
2 from the same fruit that is juiced is reintroduced to the juice for “consistent quality and flavor.”
3 At the same time, however, Tropicana suggests that the flavor of its oranges is protected by
4 gentle squeezing and that the handling of its oranges provides that “unique, straight-from-the-
5 orange Tropicana taste.” This is simply a false representation as to the true process by which
6 Defendants manufacture Tropicana Orange Juice.
7

8 35. Defendants omit material details about how Tropicana Orange Juice is produced,
9 processed, and flavored both in their advertisements and on product packaging and labeling.
10 Instead, Tropicana Orange Juice is deceptively marketed as “natural orange juice” made from
11 fresh squeezed oranges.
12

13 36. Defendants have engaged in a uniform marketing and advertising program
14 representing that Tropicana Orange Juice is natural and made from fresh oranges to induce
15 consumers to purchase Tropicana Orange Juice. These representations are prominently displayed
16 on Tropicana Orange Juice labels, and within Tropicana Orange Juice advertisements,
17 promotional materials and websites.
18

19 37. Tropicana Orange Juice commercials, print advertising, and on-line marketing is
20 false and misleading because it fails to inform the consumer: (1) that it has been unnaturally
21 processed; (2) the extent to which it has been unnaturally processed; (3) how it is stored and
22 preserved, and for how long; and (4) that its flavor and aroma is scientifically engineered.
23 Instead, Defendants’ advertising and labeling deceptively states that the product is natural orange
24 juice.
25

26 38. When Florida oranges are out of season, Tropicana Orange Juice is a mixture of
27 Florida juice, some or all of which has been stored from previous seasons, and orange juice
28

1 processed in Brazil and shipped to the United States. Processed orange juice from Brazil is
2 exported to ports in the United States in converted bulk carriers, tankers, and other massive
3 shipping vessels. These orange juice tankers carry millions of gallons of orange juice cargo and
4 contribute more than 20% of the juice contained in Tropicana Orange Juice.

5 39. Upon information an belief, oranges were also shipped in from Mexico. However,
6 oranges from Mexico and Brazil are not subject to the same pesticide regulation and scrutiny as
7 those grown in the United States, and when those oranges are squeezed for their flavor, their
8 pesticides are also squeezed into the juice
9

10 40. Defendants' advertising and labeling representations that Tropicana Orange Juice
11 is natural pertain to the composition, attributes, characteristics, nutritional value, health qualities
12 and value of Tropicana Orange Juice. As a result of Defendant's misleading marketing
13 campaign, Plaintiff and members of the class purchased products that they would not have
14 purchased or paid more than they otherwise would have been willing to pay if the orange juice
15 they purchased had been advertised accurately.
16

17 CLASS ACTION ALLEGATIONS

18 41. Plaintiff brings this lawsuit on behalf of himself and the proposed class members
19 (the "California Class" and "Multistate Class" collectively, the "class") under Rule 23(b) (2) and
20 (3) of the Federal Rules of Civil Procedure. The proposed classes consist of:
21

22 *(a) California Class: All persons who purchased Tropicana Orange Juice in the State*
23 *of California.*
24

25 *(b) Multistate Class: All persons who purchased Tropicana Orange Juice in the United*
26 *States.*
27
28

1 42. Contingent upon additional information obtained through further investigation
2 and discovery, the foregoing definition of the class may be expanded or narrowed by amendment
3 or amended complaint.

4 43. Specifically excluded from the class are Defendants, their officers, directors,
5 agents, trustees, parents, children, corporations, trusts, representatives, employees, principals,
6 servants, partners, joint venturers, or entities controlled by Defendants, and their heirs,
7 successors, assigns, or other persons or entities related to or affiliated with Defendants and/or
8 their officers and/or directors, the judge assigned to this action, and any member of the judge's
9 immediate family.
10

11 44. **Numerosity.** The members of the class are so numerous that individual joinder is
12 impracticable. Upon information and belief, Plaintiff alleges that the class contains many
13 thousands of members. The precise number of class members is unknown to Plaintiff. The true
14 number of class members is known by the Defendants, however, and thus, may be notified of the
15 pendency of this action by first class mail, electronic mail, or published notice.
16

17 45. **Existence and predominance of common questions of law and fact.** Common
18 questions of law and fact exist as to all members of the class and predominate over any questions
19 affecting only individual class members. These common legal and factual questions include, but
20 are not limited to, the following:
21

22 (a) Whether Defendants knew that its representations were false but continued
23 to disseminate them;
24

25 (b) Whether Defendants' claims are true, misleading, or reasonably likely to
26 deceive;
27
28

1 (c) Whether Defendants had adequate substantiation for their claims prior to
2 making them;

3 (d) Whether Defendants engaged in false or deceptive advertising;

4 (e) Whether Defendants violated California Unfair Business Practice Stat.
5 §§17200 et seq.;

6 (f) Whether Defendants' conduct constitutes violations of the California
7 Deceptive and Unfair Trade Practices Act;

8 (g) Whether Defendants breached an express warranty to Plaintiff and the class;

9 (h) Whether Plaintiff and the class have sustained monetary loss and the
10 measure of that loss;

11 (i) Whether Plaintiff and the class are entitled to punitive damages; and

12 (j) Whether Plaintiff and class members are entitled to declaratory and
13 injunctive relief.

14 46. **Typicality.** Plaintiff's claims are typical of the claims of the members of the class
15 in that Defendants deceived Plaintiff in the very same manner as it deceived each member of the
16 class.

17 47. **Adequacy of representation.** Plaintiff will fairly and adequately protect the
18 interests of the class. Plaintiff has retained counsel highly experienced in complex consumer
19 class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
20 adverse or antagonistic interests to those of the class.

21 48. **Superiority.** A class action is superior to all other available means for the fair and
22 efficient adjudication of this controversy. The damages or other financial detriment suffered by
23 individual class members is relatively small compared to the burden and expense that would be
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1 entailed by individual litigation of their claims against Defendants. It would thus be virtually
2 impossible for the class, on an individual basis, to obtain effective redress for the wrongs
3 committed against them. Furthermore, even if class members could afford such individualized
4 litigation, the court system could not. Individualized litigation would create the danger of
5 inconsistent or contradictory judgments arising from the same set of facts. Individualized
6 litigation would also increase the delay and expense to all parties and the court system from the
7 issues raised by this action. By contrast, the class action device provides the benefits of
8 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
9 supervision by a single court, and presents no unusual management difficulties under the
10 circumstances here.
11

12
13 49. In the alternative, the class may also be certified because:

14 (a) The prosecution of separate actions by individual class members would
15 create a risk of inconsistent or varying adjudication with respect to individual class members that
16 would establish incompatible standards of conduct for the defendant;
17

18 (b) The prosecution of separate actions by individual class members would
19 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive
20 of the interests of other class members not parties to the adjudications, or substantially impair or
21 impede their ability to protect their interests; and/or
22

23 (c) Defendants has acted or refused to act on grounds generally applicable to the
24 class thereby making appropriate final declaratory and/or injunctive relief with respect to the
25 members of the class as a whole.

26 50. The claims asserted herein are applicable to all customers throughout the United
27 States who purchased Tropicana Orange Juice.
28

51. Adequate notice can be given to class members directly using information maintained in Defendants' or its direct purchasers' records, or through notice by publication.

52. Damages may be calculated, in part, from the sales information maintained in Defendants' records, so that the cost of administering a recovery for the class can be minimized. However, the precise amount of damages available to Plaintiff and the class is not a barrier to class certification.

53. Unless a class is certified, Defendants will retain monies received as a result of their conduct that was taken from Plaintiff and the class. Unless a class-wide injunction is issued, Defendants will continue to commit the violations alleged herein, and the class will continue to be deceived.

CAUSES OF ACTION
COUNT 1
Violations of the CLRA
On Behalf of Plaintiff and the Class

54. Plaintiff realleges and incorporates by reference the allegations throughout this complaint as if fully set forth herein.

55. This cause of action is brought pursuant to California's CLRA. Plaintiff is a consumer as defined by California's Civil Code Section 1761(d). Tropicana orange juice is a good pursuant to California Civil Code and within the meaning of CLRA.

56. Defendants violated and continue to violate the CLRA by engaging in the following practices proscribed by California Civil Code Section 1770(a) which were intended to result in, and did result in, the sale of Tropicana orange juice:

(5) Representing that [the product have] characteristics, uses [or] benefits which they do not have;

1 (7) Representing that [the Product] are of a particular standard, quality, grade if they are
2 another;

3 (9) Advertising goods with intent not to sell them as advertised; and

4 (16) Representing that the subject of the transaction has been supplied in accordance with a
5 previous representation when it has not.

6 57. Defendants violated the CLRA by marketing and advertising its Tropicana orange juice
7 in the manner described herein, when it knew the labeling and advertisements were unsubstantiated,
8 false and misleading.

9
10 58. Defendants intended that Plaintiff and class members would rely on the false and
11 misleading representations and any reasonable consumer would deem the false and misleading
12 representations material to the purchase of Tropicana.

13 58. As a result of Defendants' conduct, Plaintiff and the class members suffered injury in
14 fact, loss of money or property, and otherwise have been damaged.

15
16 59. Pursuant to California Civil Code Section 17829(d), Plaintiff and the class members seek
17 a Court order enjoining the above-described wrongful acts and practices of Defendants and for
18 restitution and disgorgement.

19 60. Pursuant to Section 1782 of the CLRA, by letter Plaintiff notified Defendants in writing
20 of the particular violations of Section 1770 of the CLRA and demanded Defendants rectify the
21 problems associated with the actions detailed above and to give notice to all affected consumers of its
22 intent to so act.

23
24 61. Defendants have failed to rectify and or agree to rectify the problems associated with the
25 actions detailed above within 30 days of the date of written notice pursuant to Section 1782 of the
26 Act. Accordingly, Plaintiff seeks actual, punitive and statutory damages, as appropriate, and all other
27 relief permitted under the CLRA.
28

62. Defendants' conduct is malicious, fraudulent and wanton.

COUNT II
Violation of the FAL
On Behalf of Plaintiff and the California Class

63. Plaintiff realleges and incorporates by reference the allegations throughout this complaint as if fully set forth herein.

64. The misrepresentations, acts and non-disclosures by Defendants of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of the FAL.

65. At all times relevant hereto, Defendants advertisements and promotions regarding Tropicana were untrue, misleading and likely to deceive the public. Defendants have deceived Plaintiff and other consumers, including class members, by representing that Tropicana is all natural, when, in fact, it is not.

67. Defendants engaged in the false and or misleading advertising and marketing alleged herein with intent to directly and or indirectly induce the purchase of Tropicana orange juice.

68. The false and misleading advertising was material to Plaintiff and the class members in connection with their respective decisions to purchase Tropicana orange juice.

69. Plaintiff and the class members relied on the false advertisements and misrepresentations, which played a substantial part in the influencing the decision of Plaintiff and the class members to purchase Tropicana orange juice. Defendants intended that Plaintiff and other consumers would rely on the false and misleading representations.

1 70. In making and disseminating the statements and or omissions alleged herein,
2 Tropicana knew, or should have now, the statements and or omissions were untrue and or
3 misleading, and acted in violation of the FAL.

4 71. Plaintiff and the class members have suffered injury in fact and have lost money
5 and or property as a result of Defendants' unfair competition, as more fully set forth herein.
6 Plaintiff and the class members have been injured because they overpaid for Tropicana orange
7 juice, since the value of the Product was diminished at the time of sale. Plaintiff and the class
8 members have been injured because had they been made aware that Tropicana is not all natural,
9 they would not have purchased Tropicana or would have paid substantially less for it.
10

11 72. Defendants, through their acts of unfair competition, have unfairly acquired
12 money from Plaintiff and the class members. Plaintiff can better determine the amount of the
13 amount of money Defendants improperly obtained through discovery.
14

15 73. Plaintiff seeks an order requiring Defendants to undertake a public information
16 campaign to inform class members of its prior acts and or practices.
17

18 74. Unless Defendants are enjoined from continuing to engage in such wrongful
19 actions and conducts, class members will continue to be damaged by Defendants' false and or
20 misleading advertising.

21 75. Plaintiff also seeks an order requiring Defendants to (a) make full restitution of all
22 monies wrongfully obtained and (b) disgorge all ill-gotten revenues and or profits, together with
23 interest thereon.
24

25 76. Plaintiff also seeks attorneys' fees and costs pursuant to, inter alia, Code of Civil
26 Procedure Section 1021.5.
27
28

COUNT III
Violation of the UCL
On Behalf of Plaintiff and the California Class

75. Plaintiff realleges and incorporates by reference the allegations throughout this complaint as if fully set forth herein

76. The UCL defines unfair business competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. California Business & Professions Code Section 17200, et seq. The UCL also provides for injunctive relief and restitution for violations.

Defendants’ conduct as alleged herein constitutes unlawful, unfair and or fraudulent business acts and practices.

By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of the UCL.

Defendants’ business practices and acts are “fraudulent” because they deceived and or are likely to deceive Plaintiff and the class members. Specifically, Defendants intentionally and misleadingly marketed and sold Tropicana orange juice as all natural.

Defendants’ business practices, and each of them, are “unfair” because they offend established public policy and or are immoral, unethical, oppressive, unscrupulous and or substantially injurious to consumers in that consumers are led to believe that Tropicana orange juice has qualities and benefits it does not have.

The injury to Plaintiff and the class members greatly outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances.

There were reasonably available alternatives to further Defendants legitimate business interest, other than the conduct described herein.

1 Defendants' acts and practices are "unlawful" because Defendants engaged in false and or
2 misleading advertising, in violation of Civil Code Section 1572, 1688, 1709, 1710, the FAL and
3 the CLRA and also are violate of Defendants' warranties.

4 Plaintiff and the class members reserve the right to allege other violations of law which
5 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
6 this date.

7
8 Plaintiff and the class members have suffered injury in fact and have lost money and or
9 property as a result of Defendants' unfair competition, as more fully set forth herein. Plaintiff
10 and the class members have been injured because they overpaid for Tropicana orange juice.
11 Plaintiff and the class members also have been injured because, had they been made aware that
12 Tropicana is not all natural as represented, they would not have purchased Tropicana, or would
13 have paid substantially less for the product.

14
15 Defendants, though its acts of unfair competition, has unfairly acquired money from
16 Plaintiff and the class members.

17
18 Unless Defendants are enjoined from continuing to engage in the unlawful, unfair,
19 fraudulent, untrue and deceptive business acts and practices as described herein, consumers will
20 continue to be exposed to and damaged by Defendants' unfair competition.

21
22 Plaintiff seeks an order requiring Defendants to undertake a public information campaign
23 to inform class members of its prior acts and or practices.

24 Plaintiff also seeks all relief available to him and the class members pursuant to the FAL.

25 Plaintiff also seeks attorneys' fees and costs pursuant to, inter alia, Code of Civil
26 Procedure Section 1021.5.

27 **COUNT III**
28 **Breach of Express Warranty**

On Behalf of Plaintiff, the California Class and the Multistate Class

75. Plaintiff realleges and incorporates by reference the allegations throughout this complaint as if fully set forth herein

76. Plaintiff, and each member of the California Class and Multistate Class, formed a contract with Defendants at the time Plaintiff and the other members of the California Class and Multistate Class purchased the products. The terms of that contract include the promises and affirmations of fact made by Defendants on their product labels and through their marketing campaign, as described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the California Class and Multistate Class on the one hand, and Defendants on the other.

77. All conditions precedent to Defendants' liability under this contract, including notice, has been performed by Plaintiff and the California Class and Multistate Class.

78. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the California Class and Multistate Class by not providing the product which could provide the benefits described above.

79. As a result of Defendants' breach of its contract and warranties, Plaintiff and the California Class and Multistate Class have been damaged in the amount of the purchase price of the Products they purchased.

COUNT IV

Unjust Enrichment

On Behalf of Plaintiff, the California Class, and the Multistate Class

80. Plaintiff realleges and incorporates by reference the allegations throughout this complaint as if fully set forth herein.

1 81. This Count is brought in the alternative. *See* Fed. R. Civ. P. 8(e) (2).

2 82. Plaintiff, the California Class and Multistate Class conferred a benefit upon
3 Defendants by paying for a product with benefits that could not be provided or delivered.

4 83. Defendants voluntarily accepted and retained the benefit of the monies paid by
5 Plaintiff, the California Class and Multistate Class.

6 84. Defendants have been enriched, at the expense of Plaintiff, the California Class
7 and Multistate Class, by retaining monies from Product purchasers for benefits which they did
8 not provide.
9

10 85. Plaintiff and the other members of the California Class and Multistate Class who
11 have paid for benefits that could not be provided or delivered by Defendants have been damaged
12 as a result of Defendants' unjust enrichment and are entitled to a refund, plus interest thereupon.
13

14 86. As a direct and proximate result of Defendants' misconduct, Plaintiff, the
15 California Class and the Multistate Class have suffered injury and are entitled to reimbursement,
16 restitution, and disgorgement in the amount necessary to restore them to the position they would
17 have been in if Defendants have not retained monies for benefits which they could not provide or
18 deliver.
19

20 87. Plaintiff and the class have no adequate remedy at law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

23 A. Certifying the California Class and Multistate Class as requested herein,
24 appointing Plaintiff as the representative of the class, and appointing Plaintiff's counsel lead
25 counsel;
26
27
28

1 B. Ordering that Defendants are financially responsible for notifying all members of
2 the class of the alleged misrepresentations and omissions discussed herein;

3 C. Declaring that Defendants' conduct violates the statutes referenced herein;

4 D. Awarding Plaintiff and the proposed class members damages;

5 E. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and
6 the proposed class members;

7
8 F. Awarding declaratory and injunctive relief, including: enjoining Defendants from
9 continuing the unlawful practices as set forth herein, and directing Defendants to identify, with
10 Court supervision, victims of its conduct and pay them restitution and disgorgement of all
11 monies acquired by Defendants by means of any act or practice declared by this Court to be
12 wrongful;

13
14 G. Ordering Defendants to engage in corrective advertising;

15 H. Awarding interest on the monies wrongfully obtained from the date of collection
16 through the date of entry of judgment in this action;

17 I. Awarding attorneys' fees and costs; and

18 J. Providing such further relief as may be just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable.

Respectfully submitted,

Dated: July 6, 2010

THE TERRELL LAW GROUP


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